

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA,)	
)	
)	
)	
Plaintiff,)	
)	
v.)	
)	CIVIL ACTION NO.
)	
AIR LIQUIDE AMERICA)	
CORPORATION)	
)	
Defendant.)	
)	
_____)	

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this Complaint and alleges as follows:

STATEMENT OF THE CASE

1. This is a civil action brought pursuant to the Clean Air Act, ("CAA"), 42 U.S.C. § 7401 et seq., against Defendant, Air Liquide America Corporation ("Air Liquide" or "Defendant"), for civil penalties and injunctive relief for violations of the industrial refrigerant repair, testing, record-keeping, and reporting regulations at 40 C.F.R. Part 82, Subpart F, §§ 82.152 - 82.166, ("Recycling and Emission Reduction"), promulgated pursuant to Subchapter VI of the CAA ("Stratospheric Ozone Protection"), 42 U.S.C. §§ 7671 - 7671q.

2. This action concerns Air Liquide's facilities located or formerly located at: (1) Gate 5 at U.S. Steel, Fairfield, Alabama 35064 (the "Fairfield, Alabama" facility); (2) 6510 Arctic Spur Rd., Anchorage, Alaska 99518 (the "Anchorage, Alaska" facility); (3) 8700 East Old Vail Road, Tuscon, Arizona 85747 (the "Tuscon, Arizona" facility); (4) 12550 Arrow Route, Etiwanda, California 91739 (the "Etiwanda, California" facility); (5) 1450 5th Street, Denver, Colorado 80218 (the "Denver, Colorado" facility); (6) 7007 North Courtenay, Merritt Island, Florida 32953 (the "Merritt Island, Florida" facility); (7) 9857 Bachman Road, Orlando, Florida 32824 (the "Orlando, Florida" facility); (8) 2601 East President Street, Savannah, Georgia 31404 (the "Savannah, Georgia" facility); (9) 91-163 Hanua Street, Kapolei, Hawaii 96707 (the "Kapolei, Hawaii" facility); (10) 57805 Evergreen Road, Plaquemine, Louisiana 70764 (the "Plaquemine, Louisiana" facility); (11) 1093 PPG Drive, Westlake, Louisiana 70669 (the "Westlake, Louisiana" facility); (12) 114 Cardox Drive, Madison, Mississippi 39110 (the "Madison, Mississippi" facility); (13) 600 S. Montana, East Helena, Montana 59635 (the "East Helena, Montana" facility); (14) 2200 Firestone Parkway, Kinston, North Carolina 28501 (the "Kinston, North Carolina" facility); (15) 7248 SW 29th Street, Oklahoma City, Oklahoma 73179 (the "Oklahoma City, Oklahoma" facility); (16) 2750 Lafayette Ave., McMinnville Oregon 97128 (the "McMinnville, Oregon" facility); (17) 125 Brooks Blvd., Spartanburg, South Carolina 29307 (the "Spartanburg, South Carolina" facility); (18) 311 Commerce Blvd., Cleburne, Texas 76031 (the "Cleburne, Texas" facility); (19) 13140 TI Boulevard, Dallas, Texas 75243 (the "Dallas, Texas" facility); (20) 722 FM 1845, Longview, Texas 75603 (the "Longview, Texas" facility); (21) 1101 N. Geneva Rd., Vineyard, Utah 84058 (the "Vineyard, Utah" facility); and (22) 8008 S. 222nd Street, Kent, Washington 98032 (the "Kent, Washington" facility) (collectively the "22-Facilities") .

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b) and 28 U.S.C. §§ 1331, 1345, 1355.

4. Venue is proper in the Southern District of Texas, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and 1395(a) because it is the judicial district in which Defendant's principal place of business is located.

NOTICE AND AUTHORITY

5. The United States Department of Justice has authority to bring this action on behalf of the Administrator of the Environmental Protection Agency ("EPA") pursuant to 28 U.S.C. §§ 516, and 519, and Section 305(a) of the CAA, 42 U.S.C. § 7605(a).

6. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), the United States has notified the States in which each of the 22-Facilities are located that the United States is commencing this action against Defendant.

DEFENDANT

7. Defendant Air Liquide is a corporation incorporated under the laws of the State of Delaware. Air Liquide manufactures industrial and medical gases including cryogenic oxygen and nitrogen, carbon dioxide, argon, acetylene, hydrogen, and helium at numerous facilities throughout the United States.

8. Defendant is a "person", as that term is defined at Section 302(e) of the CAA, 42 U.S.C. § 7602(e) and 40 C.F.R. § 82.152, and within the meaning ascribed under Section 113 of the CAA, 42 U.S.C. § 7413.

DEFINITIONS

9. As defined by 40 C.F.R. § 82.152, the phrase "industrial process refrigeration" means, for the purposes of 40 C.F.R. § 82.156(i), complex customized appliances used in the chemical, pharmaceutical, petrochemical, and manufacturing industries.

10. An "appliance" includes any device which contains and uses a class I or class II substance as a refrigerant used for commercial purposes, including any refrigerator or chiller. 40 C.F.R. § 82.152.

STATUTORY AND REGULATORY PROVISIONS

11. Subchapter VI of the CAA, 42 U.S.C. §§ 7671-7671q implements the Montreal Protocol on Substances that Deplete the Ozone Layer, and mandates the elimination or control of emissions of substances known to or suspected of destroying the stratospheric ozone layer, known as Class I and Class II ozone-depleting substances.

12. Section 608 of Subchapter VI, 42 U.S.C. § 7671g ("National Recycling and Emission Reduction Program") requires EPA to promulgate regulations establishing standards and requirements regarding the use and disposal of regulated refrigerants, known as Class I and Class II ozone-depleting substances, during the service, repair, or disposal of appliances and industrial process refrigeration. Such regulations are to reduce the use and emission of known or suspected ozone-depleting substances to their "lowest achievable level" and "maximize the recapture and recycling of such substances." Section 608(a)(3) of the CAA, 42 U.S.C. § 7671g(a)(3).

13. EPA promulgated the regulations required by Section 608 of the CAA, codified at 40 C.F.R. Part 82, Subpart F, §§ 82.150- 82.166, ("Recycling and Emissions Reduction") (hereinafter

"Subpart F Regulations"), on May 14, 1993. 58 Fed. Reg. 28,712.

14. The Subpart F Regulations include leak repair requirements with regard to, inter alia, “industrial process refrigeration” equipment containing greater than fifty (50) pounds of refrigerant. 40 C.F.R. § 82.156(i). “Industrial process refrigeration” is defined by 40 C.F.R. § 82.152 as “complex customized appliances used in . . . manufacturing industries . . . directly linked to the industrial process. . .”

15. Subchapter VI of the CAA prohibits any person “maintaining, servicing, repairing, or disposing of an appliance or industrial process refrigeration, to knowingly vent or otherwise release or dispose of any such Class I or Class II substances used as a refrigerant in such appliance (or industrial process refrigeration) in a manner which permits such substance to enter the environment.” 42 U.S.C. § 7671g(c)(1). The Subpart F Regulations reiterate this prohibition. 40 C.F.R. § 82.154(a).

16. As required by 40 C.F.R. § 82.156(a), when industrial process refrigeration equipment is opened for maintenance, servicing, or repair, refrigerants are not to be vented to the atmosphere, but instead are to be evacuated using “certified refrigerant recovery or recycling equipment” as defined by 40 C.F.R. § 82.152.

17. Persons maintaining, servicing, or repairing industrial process refrigeration equipment must certify to EPA, inter alia, that such person has acquired “certified refrigerant recovery or recycling equipment,” and will properly use such equipment in maintaining, servicing, or repairing industrial process refrigeration equipment. 40 C.F.R. § 82.162

18. Persons who maintain, service, or repair industrial process refrigeration equipment must be certified by an approved technician certification program, and a copy of the technician’s certificate must

be kept at his/her place of business. 40 C.F.R. § 82.161.

19. The Subpart F Regulations prohibit leaks of ozone-depleting substances from industrial process refrigeration equipment having a charge of 50 or more pounds, and require that leaks at excessive rates be timely repaired, or the equipment be retrofitted or replaced.

20. The maximum allowable leak rate of ozone-depleting substances from industrial process refrigeration equipment having a charge of 50 or more pounds, on an annualized basis, is 35%. 40 C.F.R. § 82.156.

21. If industrial process refrigeration equipment is leaking ozone-depleting substances at an annualized rate greater than 35%, the owner/operator of such equipment must repair the leak, bringing the annualized leak rate below 35%, within thirty days after the owner/operator discovered, or should have known of, the leak. 40 C.F.R. §§ 82.156(i)(2) & (i)(9). Additional time may be allowed to complete the repairs if necessary parts are unavailable, other regulatory requirements make it impossible to complete the repairs within 30 days, or an industrial process must be shutdown to complete the repairs, provided, inter alia, that all repairs which could be made within the initial period are completed within the shorter period of time. 40 C.F.R. § 82.156(i)(2), (i), & (ii).

22. The Subpart F Regulations provide an exception to the requirement that the leaking equipment be repaired within 30 days. Leaks do not need to be repaired if, within 30 days after discovering the leak, the owner/operator develops a written, detailed plan to retire the equipment and replace it with equipment that uses non-ozone depleting substances or a less ozone-depleting substance or to retrofit the existing equipment within one year. 40 C.F.R. § 82.156(i)(6). The plan must be dated and all work under the plan must be completed within one year except as otherwise provided by

the Subpart F Regulations.

23. An “initial verification test” must be performed at the conclusion of efforts to repair leaks, not to exceed 30 days, to ensure the repairs were successful. 40 C.F.R. § 82.156(i)(3).

24. Within thirty days after an “initial verification test is performed, a “follow-up verification test” must be completed to ensure the repairs were successful. 40 C.F.R. § 82.156(i)(3).

25. If repairs were not successful, i.e., the tests reveal that the equipment is still leaking refrigerant at an excessive rate, the owner/operator must notify EPA of the failed repair efforts within 30 days. 40 C.F.R. §§82.156(i)(3)(iii), 82.166(n) & (o). In addition, the owner/operator must prepare a written plan to retrofit or retire the equipment within 30 days after discovering the initial leak or the failure of a follow-up verification test, and the plan must be completed within one year. 40 C.F.R. § 82.156(i)(6). The plan must be provided to EPA. 40 C.F.R. §§ 82.156(i)(6)(ii) and 82.166(n)&(o). If additional time is sought to complete the retrofit or retirement of the leaking equipment, the owner/operator of the leaking industrial process refrigeration equipment must timely demonstrate to EPA that all the conditions set forth in 40 C.F.R. § 82.156(i)(7) are met, and comply with the reporting requirements of 40 C.F.R. § 82.166(n) & (o).

26. The Subpart F regulations establish record keeping requirements. The owner/operator of appliances containing 50 or more pounds of refrigerant must maintain, inter alia, records detailing the date and type of service, as well as the amount of refrigerant added to the equipment. 40 C.F.R. § 82.166(k).

27. Pursuant to 40 C.F.R. § 82.166(n), the owner/operator of industrial process refrigeration equipment must maintain information on-site, and as required by 40 C.F.R. § 82.156(i)(2) or (3) report

to the EPA, inter alia, the leak rate of any equipment, the method used to determine the leak rate, the date a leak rate greater than the allowable leak rate was discovered, the location and extent of leaks, and the date and type of repair work that has been completed.

28. The dates, types, and results of all initial and follow-up verification tests performed must be maintained and submitted to EPA by the owner/operator of industrial process refrigeration equipment in accordance with the requirements of 40 C.F.R. § 82.166(n)(3).

29. Section 113(b) of the CAA, 42 U.S.C. § 7413(b), authorizes the United States to commence a civil action for a permanent or temporary injunction, and to assess civil penalties up to \$25,000 per day for each violation of Section 608 of the CAA, 42 U.S.C. § 7671g, prior to January 30, 1997, and for civil penalties up to \$27,500 per day for each violation occurring on and after that date pursuant to Pub. L. 104-134 and 40 C.F.R. § 82.156.

GENERAL ALLEGATIONS COMMON TO ALL FACILITIES

30. At all times relative to this Complaint, Air Liquide has been the “owner or operator” of one or more industrial process refrigeration systems at each of the 22-Facilities normally containing more than 50 or more pounds of HCFC-22 (“R-22”), a regulated “Class II” substance within the meaning of Section 602(b) of the CAA, 42 U.S.C. § 7671a(b), 40 C.F.R. Part 82, Subpart A, Appendix B, 40 C.F.R. § 82.154(a), and 40 C.F.R. Part 82, Subpart F, Appendix B.

31. The industrial process refrigeration systems at each of the 22-Facilities and which are the subject of this action constitute “‘industrial process refrigeration’ equipment” as described in 40 C.F.R. §§ 82.152 and 82.156, and are “appliances” within the meaning of 42 U.S.C. § 7671(1) and 40 C.F.R. § 82.152(a).

FIRST CLAIM FOR RELIEF

(VIOLATIONS OF SECTION 608 OF THE CAA AND 40 C.F.R. § 82.156(i)(2))

32. Paragraphs 1 through 31 are realleged and incorporated herein by reference.

33. The annualized leak rates of Class II substances from one or more industrial process refrigeration systems at each of the following facilities exceeded an annualized leak rate of 35% on one or more occasions during the five-year period prior to May 15, 2000 in violation of Section 608 of the Act, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(2): Fairfield, Alabama; Anchorage, Alaska; Tucson, Arizona; Etiwanda, California; Denver, Colorado; Merritt Island, Florida; Orlando, Florida; Savannah, Georgia; Kapolei, Hawaii; Westlake, Louisiana; Madison, Mississippi; East Helena, Montana; Kinston, North Carolina; Oklahoma City, Oklahoma; McMinnville, Oregon; Spartanburg, South Carolina; Dallas, Texas; and Vineyard, Utah.

34. For each violation of Section 608 of the Act, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(2), at each industrial process refrigeration system at each facility described above, civil penalties should be imposed against Air Liquide of not more than \$25,000 per day, per violation for violations occurring prior to January 30, 1997, of not more than \$27,500 per day, per violation for violations occurring thereafter.

SECOND CLAIM FOR RELIEF

(VIOLATIONS OF SECTION 608 OF THE CAA AND 40 C.F.R. § 82.156(i)(3))

35. Paragraphs 1 through 34 are realleged and incorporated herein by reference.

36. Air Liquide failed to perform one or more initial verification leak tests as required by Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(3) at one or more industrial process refrigeration systems at each of the following facilities during the five-year period prior to May

15, 2000: Anchorage, Alaska; Tucson, Arizona; Etiwanda, California; Denver, Colorado; Orlando, Florida; Savannah, Georgia; Kapolei, Hawaii; Westlake, Louisiana; East Helena, Montana; Kinston, North Carolina; Oklahoma City, Oklahoma; McMinnville, Oregon; Spartanburg, South Carolina; Dallas, Texas; and Vineyard, Utah.

37. For each violation of Section 608 of the Act, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(3), at each industrial process refrigeration system at each facility described above, civil penalties should be imposed against Air Liquide of not more than \$25,000 per day, per violation for violations occurring prior to January 30, 1997, and of not more than \$27,500 per day, per violation for violations occurring thereafter.

THIRD CLAIM FOR RELIEF

(VIOLATIONS OF SECTION 608 OF THE CAA AND 40 C.F.R. § 82.156(i)(3))

38. Paragraphs 1 through 37 are realleged and incorporated herein by reference.

39. Air Liquide failed to perform one or more follow-up verification leak tests as required by Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(3) at one or more industrial process refrigeration systems at each of the following facilities during the five-year period prior to May 15, 2000: Fairfield, Alabama; Anchorage, Alaska; Tucson, Arizona; Etiwanda, California; Denver, Colorado; Merritt Island, Florida; Orlando, Florida; Savannah, Georgia; Kapolei, Hawaii; Westlake, Louisiana; Madison, Mississippi; East Helena, Montana; Kinston, North Carolina; Oklahoma City, Oklahoma; McMinnville, Oregon; Spartanburg, South Carolina; Dallas, Texas; and Vineyard, Utah.

40. For each violation of Section 608 of the Act, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(3), at each industrial process refrigeration system at each facility described above, civil

penalties should be imposed against Air Liquide of not more than \$25,000 per day, per violation for violations occurring prior to January 30, 1997, and of not more than \$27,500 per day, per violation for violations occurring thereafter.

FOURTH CLAIM FOR RELIEF

(VIOLATIONS OF SECTION 608 OF THE CAA AND 40 C.F.R. § 82.156(i)(3)(iii))

41. Paragraphs 1 through 40 are realleged and incorporated herein by reference.

42. Air Liquide failed to notify EPA that industrial process refrigeration equipment failed one or more follow-up verification tests as required by Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(3)(iii) with respect to one or more industrial process refrigeration systems at each of the following facilities during the five-year period prior to May 15, 2000: Anchorage, Alaska; Tucson, Arizona; Etiwanda, California; Denver, Colorado; Merritt Island, Florida; Orlando, Florida; Savannah, Georgia; Kapolei, Hawaii; Westlake, Louisiana; Madison, Mississippi; East Helena, Montana; Kinston, North Carolina; Oklahoma City, Oklahoma; McMinnville, Oregon; Spartanburg, South Carolina; Dallas, Texas; and Vineyard, Utah.

43. For each violation of Section 608 of the Act, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(3)(iii), at each industrial process refrigeration system at each facility described above, civil penalties should be imposed against Air Liquide of not more than \$25,000 per day, per violation for violations occurring prior to January 30, 1997, and of not more than \$27,500 per day, per violation for violations occurring thereafter.

FIFTH CLAIM FOR RELIEF

(VIOLATIONS OF SECTION 608 OF THE CAA AND 40 C.F.R. § 82.156(i)(6))

44. Paragraphs 1 through 43 are realleged and incorporated herein by reference.

45. Air Liquide failed to develop a written, one-year retrofit or retirement plan for leaking industrial process refrigeration systems equipment as required by Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(6) with respect to one or more industrial process refrigeration systems at each of the following facilities during the five-year period prior to May 15, 2000:

Anchorage, Alaska; Tucson, Arizona; Etiwanda, California; Denver, Colorado; Merritt Island, Florida; Orlando, Florida; Savannah, Georgia; Kapolei, Hawaii; Westlake, Louisiana; Madison, Mississippi; East Helena, Montana; Kinston, North Carolina; Oklahoma City, Oklahoma; McMinnville, Oregon; Spartanburg, South Carolina; Dallas, Texas; and Vineyard, Utah.

46. For each violation of Section 608 of the Act, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(6), at each industrial process refrigeration system at each facility described above, civil penalties should be imposed against Air Liquide of not more than \$25,000 per day, per violation for violations occurring prior to January 30, 1997, and of not more than \$27,500 per day, per violation for violations occurring thereafter.

SIXTH CLAIM FOR RELIEF

(VIOLATIONS OF SECTION 608 OF THE CAA AND 40 C.F.R. § 82.156(i)(3)(ii))

47. Paragraphs 1 through 46 are realleged and incorporated herein by reference.

48. Air Liquide failed to complete the retrofit or replacement of leaking industrial process refrigeration equipment, or otherwise comply with Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(3)(ii), within one year after a follow-up verification test indicated that repairs to the industrial process refrigeration equipment were not successfully completed with respect to one or more industrial process refrigeration systems at each of the following facilities during the five-year period prior

to May 15, 2000: Anchorage, Alaska; Tucson, Arizona; Etiwanda, California; Denver, Colorado; Merritt Island, Florida; Orlando, Florida; Savannah, Georgia; Kapolei, Hawaii; Westlake, Louisiana; Madison, Mississippi; East Helena, Montana; Kinston, North Carolina; Oklahoma City, Oklahoma; McMinnville, Oregon; Spartanburg, South Carolina; Dallas, Texas; and Vineyard, Utah.

49. For each violation of Section 608 of the Act, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(3)(ii), at each industrial process refrigeration system at each facility described above, civil penalties should be imposed against Air Liquide of not more than \$25,000 per day, per violation for violations occurring prior to January 30, 1997, and of not more than \$27,500 per day, per violation for violations occurring thereafter.

SEVENTH CLAIM FOR RELIEF

(VIOLATIONS OF SECTION 608 OF THE CAA AND 40 C.F.R. § 82.161)

50. Paragraphs 1 through 48 are realleged and incorporated herein by reference.

51. One or more employees of Air Liquide who performed maintenance, service, or repairs (including the addition of regulated refrigerants) to industrial process refrigeration equipment were not certified technicians at the time they performed such work, and/or Air Liquide failed to retain a copy of such required certificates at the employee's place of business, in violation of Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.161, at each of the following facilities during the five-year period prior to May 15, 2000: Fairfield, Alabama; Tucson, Arizona; Etiwanda, California; Orlando, Florida; Savannah, Georgia; Westlake, Louisiana; Madison, Mississippi; East Helena, Montana; and Spartanburg, South Carolina.

52. For each violation of Section 608 of the Act, 42 U.S.C. § 7671g, and 40 C.F.R. §

82.161, at each facility described above, civil penalties should be imposed against Air Liquide of not more than \$25,000 per day, per violation for violations occurring prior to January 30, 1997, and of not more than \$27,500 per day, per violation for violations occurring thereafter.

EIGHTH CLAIM FOR RELIEF
(VIOLATIONS OF SECTION 608 OF THE CAA AND 40 C.F.R. § 82.162)

53. Paragraphs 1 through 52 are realleged and incorporated herein by reference.

54. Air Liquide failed to certify to EPA that it had acquired certified refrigerant recovery or recycling equipment, and that it would properly use such equipment in maintaining, servicing, or repairing industrial process refrigeration equipment at facilities where it performed maintenance, servicing, or repairs to industrial process equipment in violation of Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.162(a).

55. Air Liquide's employees, upon information and belief, performed maintenance, servicing, or repairs which required either venting or evacuation of refrigerants at the following facilities where Air Liquide did not have certified refrigerant recovery or recycling equipment in violation of Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.162(a), during the five-year period prior to May 15, 2000: Fairfield, Alabama; Merritt Island, Florida; Orlando, Florida; Madison, Mississippi; and McMinnville, Oregon.

56. For each violation of Section 608 of the Act, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.162, at each facility described above, civil penalties should be imposed against Air Liquide of not more than \$25,000 per day, per violation for violations occurring prior to January 30, 1997, and of not more than \$27,500 per day, per violation for violations occurring thereafter.

NINTH CLAIM FOR RELIEF

(VIOLATIONS OF SECTION 608 OF THE CAA AND 40 C.F.R. § 82.166)

57. Paragraphs 1 through 56 are realleged and incorporated herein by reference.

58. Air Liquide failed to maintain and, as applicable, provide to EPA, information, records or reports: (a) detailing the date and type of service as well as the amount of refrigerant added to industrial process refrigeration equipment as required by 40 C.F.R. § 82.166(k); (b) the leak rate of equipment, the method used to determine the leak rate, the date that a greater than allowable leak rate was discovered, the location and extent of leaks, and the date and type of repair work that was completed as required by 40 C.F.R. § 166(n); (c) the date, type, and result of all initial and follow-up verification tests as required by 40 C.F.R. § 166(n)(3); and (d) other reporting requirements to the extent that Air Liquide asserts that it had additional time to complete the retrofitting or replacement of leaking industrial process refrigeration equipments such as the requirements set forth in 40 C.F.R. § 166(o).

59. Air Liquide failed to comply with the record keeping and reporting requirements described in the preceding paragraph at the following facilities during the five-year period prior to May 15, 2000: Fairfield, Alabama; Anchorage, Alaska; Etiwanda, California; Orlando, Florida; Savannah, Georgia; Plaquemine, Louisiana; Madison, Mississippi; East Helena, Montana; Cleburne, Texas; Dallas, Texas; Longview, Texas; Vineyard, Utah; and Kent, Washington.

60. For each violation of Section 608 of the Act, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.166, at each facility described above, civil penalties should be imposed against Air Liquide of not more than \$25,000 per day, per violation for violations occurring prior to January 30, 1997, and of not

more than \$27,500 per day, per violation for violations occurring thereafter.

TENTH CLAIM FOR RELIEF
(PERMANENT INJUNCTIVE RELIEF)

61. Paragraphs 1 through 60 are realleged and incorporated herein by reference.

62. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), permanent injunctive relief should be entered requiring, among other things, that Air Liquide retrofit or retire one or more industrial process refrigeration systems at one or more of the 22-Facilities, including but not necessarily limited to those at: Fairfield, Alabama; Tucson, Arizona; Orlando, Florida; Westlake, Louisiana; McMinnville, Oregon; and Spartanburg, South Carolina.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, prays that the Court:

A. Assess civil penalties against the Defendant Air Liquide of not more than \$25,000 per day for each violation or failure to comply with the Subpart F Regulations and the CAA for violations occurring prior to January 30, 1997, and of not more than \$27,500 per violation for violations occurring on or after January 30, 1997;

B. Enter an affirmative injunction requiring Defendant Air Liquide to retrofit or retire one or more industrial process refrigeration units at one or more of the 22-Facilities, including but not necessarily limited to those at: Fairfield, Alabama; Tucson, Arizona; Orlando, Florida; Westlake, Louisiana; McMinnville, Oregon; and Spartanburg, South Carolina;

C. The United States be awarded its costs and expenses incurred in this action; and

D. Grant the United States such other and further relief as this Court deems appropriate.

Respectfully submitted,

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